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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE JACKSON DIVISION OF THE SOUTH-
ERN DISTRICT OF MISSISSIPPI.

Pleas and Proceedings had and done at a Regular Term of the District Court of the United States for the Jackson Division of the Southern District of Mississippi, begun and held in the City of Jackson, Mississippi, on the 3rd day of May, A. D. 1920, that being the regular time and place designated by law for holding said Court. Present and Presiding the Honorable Edwin R. Holmes, United States District Judge, Hon. J. P. Alexander, United States District Attorney for said District, Hon. Floyd Loper, United States Marshal, and Jack Thompson, United States District Clerk, and W. L. Hemingway, Court Crier. Among the proceedings had and done were the following, to-wit:



IN THE
District Court of the United States
IN AND FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI, AT JACKSON.

R. E. Kennington, The R. E. Kennington Company, and
the Union Department Store vs. A. Mitchell Palmer,
et al.

ORIGINAL BILL OF COMPLAINT.

Comes the R. E. Kennington Company and the Union Department Store, corporations organized under the laws of the State of Mississippi, and domiciled at Jackson, in the First Judicial District of Hinds County, Mississippi, and R. E. Kennington, an adult resident of the City of Jackson, in the First Judicial District of Hinds County, Mississippi. The said R. E. Kennington is President of the R. E. Kennington Company and the Union Department Store, defendants herein. He holds and owns the majority of the stock of said corporations, and is the executive head of such corporations, and determines the policies of such corporations, and actively directs the management thereof. In addition thereto, he is the owner of a department store in Yazoo City, Yazoo County, Mississippi, which he manages.

A. Mitchell Palmer is a resident of the State of Pennsylvania; that he is the Attorney General of the United States, with his official residence at Washington, D. C.

That H. E. Figg assumes to act as United States Fair Price Commissioner, with his official residence in Washington, D. C.

That T. J. Locke, an adult resident of Lowndes County, Mississippi, assumes to act as State Fair Price Commissioner for the State of Mississippi.

That S. J. Taylor, an adult resident of Jackson, in the First Judicial District of Hinds County, Mississippi, assumes to act as Fair Price Commissioner for the City of Jackson, under the authority hereinafter set out.

That Julian Alexander, an adult resident of the City of Jackson, in the First Judicial District of Hinds County, Mississippi, is the United States District Attorney for the Southern District of Mississippi.

That H. M. Fulgham, an adult resident of the City of Jackson, in the First Judicial District of Hinds County,

Mississippi, is the Assistant United States District Attorney for the Southern District of Mississippi.

For cause of action the complainants show unto the court the following statement of facts:

(1) That the amount and value here in controversy, exclusive of interest and costs, exceeds the sum and value of Three Thousand Dollars of lawful money of the United States.

(2) That jurisdiction of this cause exists in this court, in that it involves a Federal question, arising upon and out of the construction of the statutes of the United States, of the Constitution of the United States, its several amendments passed in pursuance thereof; the rights, privileges and immunities sought to be derived from the said Constitution, statutes and authorities by the parties hereto, and this jurisdiction is based upon the following:

(a) The construction of Article 1, Section 1, wherein all legislative power then granted was vested in the Congress of the United States.

(b) Article 1, Section 8, whereunder Congress is given power under sub-division 5 thereof to coin money, to regulate the value thereof and of foreign coins.

(c) Article 1, Section 8, whereunder Congress is given power under sub-division 11 thereof to declare war.

(d) Article 1, Section 8, whereunder Congress is given power under sub-division 18 to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States.

(e) Article 3, Section 2, whereby the judicial power under sub-division 1 is vested in the courts of the United States in all cases brought in law and in equity arising under said Constitution and the laws of the United States.

(f) Article 4, Section 4 thereof, whereunder the United States is required to guarantee every state in this Union a republican form of Government.

(g) Article 6, Section 2 thereof, whereunder it is declared this Constitution and the laws made in pursuance thereof become the supreme law of the land.

(h) The Fourth Amendment thereof, whereunder the right of the people to be secure in their persons,

houses, papers and effects against unreasonable searches and seizures is guaranteed.

(i) Amendment Fifth thereof, whereunder no person shall be deprived of life, liberty or property without due process of law.

(j) Amendment Fifth thereof, whereunder no person shall have his private property taken for public use without just compensation.

(k) Amendment Sixth thereof, whereunder, in all criminal prosecutions, the accused shall enjoy right to speedy and public trial by an impartial jury of the State and district, and to be informed of the nature and cause of the accusation against him, and to be confronted by witnesses.

(l) Amendment Ninth thereof, whereunder it is declared that the enumeration in said constitution of certain rights shall not be construed to deny or disparage other rights retained by the people, and not delegated to the United States.

(m) And, further, involves the construction of that certain Act of Congress passed upon the 10th day of August, 1917, entitled "An Act to provide for the National Security and Defense by encouraging production, conserving the supply, and controlling the distribution of food products and fuel; and

(n) The amendment thereof passed by the Congress upon the 22nd day of October, 1919, entitled "An Act to amend an Act entitled 'An Act to provide further for National security and defense by encouraging the production, conserving the supply and controlling the distribution of food products and fuel, approved August 10, 1917, and to regulate rents in the District of Columbia'"; and

(o) Divers and sundry assumed powers and prerogatives arrogated to said respondents other than said Alexander and said Fulgham, by an alleged and pretended interpretation of the privileges and prerogatives conferred under said several acts.

(p) Complainants show unto the Court that the R. E. K. Washington Company, one of the complainants herein, now operates, and for many years has operated, in the City of Jackson, Mississippi, a high grade department store, and in said department store carries many lines of

merchandise, which it sells in the City of Jackson, and throughout the State of Mississippi, at retail and at wholesale. That during the years of its operation, by reason of the matters and facts hereinafter alleged, it has built up a very large business, which has been in the past fairly remunerative, and it is the desire and intention of the owners and operators thereof to continue to operate it on such basis in the future, unless prevented by the wrongful, harmful and injurious activities of the defendants. The Union Department Store, and R. E. Kennington's business at Yazoo City are, and have been, operated on the same basis.

(4) Complainants show unto the Court that in order that said business should be efficiently, properly and profitably conducted, in order that it may serve its proper function in the community where located, and throughout the State, as a medium of service for the purpose of furnishing to its customers merchandise at fair and reasonable prices, it is necessary for it to incur enormous expense and large financial responsibilities. That in order to ascertain the wishes and tastes of its patrons and customers, and to serve satisfactorily such wants, desires and requirements, they maintain in the City of Jackson two large stores and one in Yazoo City, a large number of clerks, employees and salesmen, and through the medium of the newspapers, advertise its facilities for supplying the requirements of the public. It not only does that, but in order to anticipate and satisfy the demands, requirements, tastes, and even whims of the public, it maintains an office in the City of New York, State of New York, as well as a connection in Paris, France, in order that it may keep in constant touch with the markets of the world. It keeps in the market for such purposes, and at great expense, a large number of buyers of merchandise. It not only does that, but it is necessary for the said complainants, at all times, to have on hand a large and expensive stock of all kinds of merchandise, which includes, among other things, what is known as wearing apparel. That it is necessary for it to incur large obligation for borrowed money, and for goods purchased upon credit in the usual course of business. That it is necessary for it, in the usual course of business to extend credit to its customers for large sums of money. That the operation of such business is attended with varied hazards and risks requiring the exercise of the greatest care and skill and judgment. To illustrate, the complainants

may purchase a line of dresses, of colors, plates and designs to suit the desires, tastes and whims of their customers; or an assortment of shoes for similar purpose, as well as many other articles of merchandise, not necessary to enumerate, and as soon as such articles have been placed in complainants' store, the tastes, desires and whims of their customers may undergo a change, or the styles may change, whereby complainants sustain a loss in that such merchandise will have to be sold for whatever it may bring.

(5) Complainants show unto the Court that by the strictest attention to business and highest efficiency, and by practicing a course of uniformly fair treatment towards the public, complainants built up in the State of Mississippi a reputation as vendors of high grade merchandise and for fair and honest dealing, and that such reputation forms a part of its business, is what is known as their good-will, and is property to the complainants.

(6) The complainants show unto the Court that beginning with the year 1914, at the outbreak of the world war, prices of foodstuffs, wearing apparel and other commodities have greatly enhanced in price; that a number of things have contributed to bring about this result:

(a) The Federal banks of this country, created and operated under the acts of Congress in order that the enormous business of the country might be carried on under the prevailing prices, have issued enormous volumes of currency, which has had the effect of making money cheap, in that the purchasing power of money has thereby been greatly reduced and diminished.

(b) A large portion of the man-power, that is to say, the producing power of the country, the young men of the country, went into the army and into foreign countries, and the productive activity of the country has been deprived of the result of their labors. The importation of foreign labor into this country, on account of the war, and during the period thereof, almost totally ceased, so that the production of the country was greatly diminished.

(c) The production of other countries was diminished by reason of the war to even greater extent, and it has been necessary that all kinds of merchandise, supplies and foodstuffs be exported to other countries, by reason of all of which, and according to the law of supply and

demand, contributed to by the diminished purchasing power of money, as aforesaid, the prices of all kinds of merchandise, including foodstuffs and wearing apparel, have many times increased in value.

(d) This condition has been greatly enhanced and exaggerated by reason of the enormous increases in wages and abundance of money in circulation, which have been made by reason of the operation of the war, and the reckless expenditures which have followed in the wake of such conditions.

(7) The prices of all kinds of merchandise and commodities, for the reasons hereinbefore set out, have increased so in price that Congress passed certain legislation with a view to alleviating conditions brought about as the result of the prices aforesaid. That upon October 22, 1919, it passed an Act amending Section 1 of the Act of August 10, 1917, making the same to read as follows:

"That by reason of the existence of a state of war, it is essential to the national security and defense, for the successful prosecution of the war, and for the support and maintenance of the army and navy, to assure an adequate supply and equitable distribution, and to facilitate the movement of foods, feeds, wearing apparel, containers primarily designed or intended for containing foods, feeds or fertilizers; fuel, including fuel oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery and equipment required for the actual production of foods, feeds and fuel, hereafter in this act called necessities; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulation and private controls affecting such supply, distribution and movement; and to establish and maintain governmental control of such necessities during the war. For such purposes, the instrumentalities, means, methods, powers, authorities, duties, obligations and prohibitions hereinafter set forth, are created, established, conferred and prescribed. The President is authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this act."

The result, and apparent purpose and effect of said amendment was to include among the articles designated

in said articles as necessary "wearing apparel," which, in the Act, originally passed had not been so designated.

In and by Section 2 of said Act, approved October 22nd, 1919, Section 4 of said Act of August 10, 1917, was amended to read as follows:

"That it is hereby made unlawful for any person wilfully to destroy any necessities for the purpose of enhancing the price or restricting the supply thereof; knowingly to permit waste or wilfully to permit preventable deterioration of any necessities in or in connection with their production, manufacture or distribution; to hoard, as defined in Section 6 of this Act, any necessities; to monopolize or attempt to monopolize, either locally or generally, any necessities; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessities; to conspire, combine, agree or arrange with any other person, (a) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing or dealing in any necessities; (b) to restrict the supply of any necessities; (c) to restrict distribution of any necessities; (d) to prevent, limit or lessen the manufacture or production of necessities in order to enhance the price thereof; or (e) to exact excessive prices for any necessities, or to aid or abet the doing of any act made unlawful by this Section. Any person violating any of the provisions of this section, upon conviction thereof, shall be fined not exceeding \$5,000.00, or be imprisoned for more than two years, or both: Provided that this section shall not apply to any farmer, gardner, horticulturist, vineyardist, planter, ranchman, dairyman, stockman, or other agriculturist with respect to the farm products produced or raised upon land owned, leased or cultivated by him; Provided further, that nothing in this Act shall be construed to forbid or make unlawful collective bargaining by any co-operative association or other association of farmers, dairymen, gardeners, or other producers of farm products produced or raised by its members upon lands owned, leased or cultivated by them."

(8) That notwithstanding the provisions of the first section of said act quoted above, that "The President is

authorized to make such regulations and to issue such orders as are essential effectively to carry out the provisions of this Act," no such regulations have been made, and no such order, or orders, issued, either by or for the President, or otherwise, or at all; and, in respect to the sale of wearing apparel, no prices, rates and charges whatsoever have been fixed, either by the President or on his behalf, or by any official body or agency, or otherwise, or at all, for the guidance of persons handling or dealing in the same; nor have any steps been taken to do so.

Complainants show unto the court that one, T. J. Locke, one of the defendants herein, assuming to be the Fair Price Commissioner of the State of Mississippi, and assuming to act under the Act of Congress hereinbefore referred to, has purported to fix maximum margin of profits on wearing apparel and merchandise throughout the State of Mississippi; that the said Locke has issued a declaration, in which he purports to set out the maximum margin of profit to be charged by merchants for wearing apparel in the State of Mississippi; that the said proclamation is in words and figures as follows, to-wit:

"Fair Price Committees are advised that the Commissioner for Mississippi has this thirtieth day of April fixed and does hereby promulgate the following maximum prices and maximum margins of profits which a retail merchant handling the following named articles of merchandise may charge, and these prices and margins of profit are based on actual, original cost, plus freight or express and war tax, and they are maximum; merchants may sell for less.

Men's and boys' suits, costing up to \$25, margin of profit 33 1-3 per cent; costing from \$25 to \$50, inclusive, margin of profit 35 per cent. The commissioner fixes no margins on suits costing merchant above \$50.

Ladies' and misses' suits and dresses, same margin of profits as on men's and boys' suits.

Men's, ladies' and children's shoes, costing up to \$3, margin of profit 25 per cent; costing from \$3 to \$8, margin of profit 30 per cent; costing from \$8 to \$10, inclusive, 33 1-3 per cent. The commissioner fixes no margin on shoes costing merchant above \$10.

Men's and children's hats: Costing up to \$5, margin of profit 30 per cent; costing from \$5 to \$10, inclusive, 40 per cent; all straw hats, margin of profit 40 per cent. No margin fixed on hats costing merchant above \$10.

Ladies' and misses' hats: Costing up to \$5, margin of

profit 30 per cent; costing from \$5 to \$10, margin of profit 40 per cent. No margins fixed on ladies' hats costing merchant above \$15.

Dry Goods: The margin of profit on all staple dry goods is 33 1-3 per cent; the margin of profit on all fancy dry goods is 40 per cent.

Men's Collars: The maximum price which may be charged for men's stiff collars (standard brands) is 25c.

Complainants show unto the Court that the said Locke, who assumes to be Fair Price Commissioner for the State of Mississippi, purporting to act under the Acts of Congress hereinbefore referred to, has appointed, or caused to be appointed, S. J. Taylor as chairman of the Fair Price Committee for the City of Jackson Mississippi, and the said S. J. Taylor has assumed the duties as such, and has approved the margin of profit for retail merchants in the State of Mississippi, set forth herein as made by the said Locke.

Complainants show unto the Court that the said Locke, assuming to act as State Fair Price Commissioner, and the said S. J. Taylor, assuming to act as Chairman of the Fair Price Committee for the City of Jackson, have notified the complainants of the maximum margins of profit fixed by the Fair Price Commissioner for the State of Mississippi, by sending copies thereof to the said complainants, and by notifying the said complainants that complainants will be expected to receive and charge no higher profit upon the sale of any merchandise than is provided by such declaration.

(9) The said S. J. Taylor, purporting to act as Chairman of the Fair Price Committee for the City of Jackson, called at the store of the complainant, the R. E. Kennington Company, examined various articles of wearing apparel, and demanded of complainants that invoices for the same be furnished to him in order that he might ascertain as to whether or not the margin of profit had and received by the said R. E. Kennington Company exceeded the margin of profit fixed by the said State Fair Price Commissioner; that the object and purposes of the said S. J. Taylor was to secure the invoices for wearing apparel offered for sale by the said complainant, to compare the same with the selling price, and if the margin of profit in any case exceeded that allowed by the State Fair Price Commissioner, to take steps to secure criminal prosecution against the said complainants, or either or both of them, claiming that the complainants violated the Act

of Congress in failing and refusing to conform to the margin of profit fixed by the State Fair Price Commissioner, if any such variation should be shown to exist.

Complainants show unto the Court that under the Constitution of the United States, neither the State Fair Price Commissioner, nor the Fair Price Committee for the City of Jackson, had any authority to demand or require any invoices, or other papers or documents of and from the complainants touching the cost of said merchandise, or any part thereof.

(10) Complainants show unto the Court that upon various and sundry days and dates subsequent to the issuance of such declaration of prices by the said Locke, Fair Price Commissioner of the State of Mississippi, as is hereinbefore set out, the said Locke and the said Taylor have been pursuing a system of espionage by sending various persons into the store of the said R. E. Kennington Company to purchase various articles of wearing apparel, have sought thereby to obtain evidence against the complainants that wearing apparel was being sold in said store for a higher basis of profit than that fixed in the declaration of the State Fair Price Commissioner; and these complainants allege and aver that it is the intention of the said Taylor and the said Locke, and the said Alexander, District Attorney, and the said Fulgham, Assistant District Attorney, at the approaching term of the United States Court for the Southern District of Mississippi, at Jackson, to secure an indictment, or indictments, against the complainants, or either or all of them, for various and sundry sales, upon various and sundry dates, alleged and claimed by them to have been made by the complainants for a basis of profit in excess of the maximum profits fixed by the State Fair Price Commissioner.

Complainants show unto the Court that they are in no manner responsible for conditions which produced the inflated prices as aforesaid, but they are brought about by conditions over which they have absolutely no control; that the complainants conduct their respective businesses just as they have always done, without attempting to obtain an average higher margin of profit than they did obtain prior to the war, and such as will yield a fair and reasonable net profit.

Complainants show unto the Court that a large amount of the merchandise sold by them, and each of them, from their respective stores, including wearing ap-

parel, is sold for less than the margins of profit fixed as aforesaid; that they are constantly required and forced to sell many articles of merchandise, including wearing apparel, for less than the original primary cost thereof, on account of change in styles, tastes, whims and caprices of customers, and for various and sundry reasons which will be made apparent herein.

Complainants show unto the Court that the said T. J. Locke, who is assuming to act as Fair Price Commissioner for the State of Mississippi, has had no experience in operating a department store; that he is engaged solely in the wholesale grocery business, and is utterly ignorant of the essential elements which enter into the proper conduct of said business; that in his own business of wholesale grocer, in which he sells foods and the necessities of life, he is not observing, or pretending to observe, the maximum margins of profit which he is endeavoring as hereinafter set out to coerce merchants in the State of Mississippi to submit to. That S. J. Taylor is not engaged in the department store, dry goods, or wearing apparel business, and has not been for ten or fifteen years; that he is utterly unfamiliar with such business, and has no accurate knowledge of the conditions under which the same is operated, or the essential elements which enter into the fixing of a fair and reasonable margin of profit therefrom; that the said S. J. Taylor is engaged in the wholesale grocery business, selling the necessities of life, in the City of Jackson, Mississippi, and the business owned and conducted by him does not pretend in any manner to conform to the maximum margins of profit fixed for such business by the State Fair Price Commissioner.

Complainants show unto the Court that their respective places of business constitute no monopoly in any sense, but there are an abundance of department stores similar to theirs, all in competition with one another, striving to supply the requirements of the trade.

Complainants show unto the Court that in each of the departments of each complainant wherein no change in stock is requisite to co-ordinate it with the whims of fashion, and to obviate other extraordinary conditions, complainants have always, are now, and will continue to ask, a profit less than that assumed to be established by respondents. In divers of their departments, more especially millinery and women's ready-to-wear, there are constantly changing modes, to comply wherewith in-

volves the rendition of an additional service by complainants, wherefor reasonable compensation must be made, as each of said departments should, to them have allocated all expenses therein incurred. As to said departments there are published in New York, Paris, and elsewhere certain illustrated magazines purporting to give in advance the styles which publications circulate among complainants' patrons, and which are conflicting and confusing in the extreme. In order to render this service, complainants must buy in advance, utilizing their office in New York, Paris, and other means hereinafter set out therefor. A rare ability, commanding a large salary, is required by those in position to anticipate the vogue at a future date, and to select those articles which, in addition to being a hat or a dress, will embody style, and to that end complainants are expending large sums in foreign markets where such things are first displayed, diligently endeavoring to winnow out of the variegated conglomerations, that which will possess style, and which will at a future date appeal to feminine fancy.

That between producers of this merchandise the output is not uniform, each several producer seeking for personal aggrandizement to individualize his output so as to make this individualism the vogue, and should any such individualism be ignored by complainants and thereafter become the vogue, the penalty would be the loss of the patronage of this class of buyers and the serious impairment of complainants' good will. In said business there is a great money risk in operating a style shop. In order to render this service, which is separate and apart from selling goods as goods, and which alone respondents have considered, it is essential that there be added to the actual out-of-pocket cost the following, which respondents have wrongfully ignored:

- (a) Actual cost of going to, remaining at, and keeping in touch with the market, and every part thereof.
- (b) Adequate high salaries commensurate with this class of ability.
- (c) Actual buying in advance of that which is hoped to be stylish and disposing thereof in due course.
- (d) Being luxurious and near luxuries, a forecasting of the ability of its purchasers to buy, predicated upon the condition in this section of the cotton crop.

That complainants' businesses in these departments

are with women, who have very definite opinion of that which is stylish, predicated upon the aforesaid publications and divers others, and should complainants procure in advance styles that would not be worn they would be absolutely unsalable, and that which the public demands of complainants is that they offer for sale that which is stylish when it is stylish, and that respondents have placed this service and the goods themselves upon the same selling basis as those goods which are sold to complainants over the counter, and complainants over that wrongfully respondents have assumed to take jurisdiction over the complete field covered by that which is denominated "wearing apparel," embracing the furnishing of style, and have wrongfully assumed to place the business of complainants under their jurisdiction, and it is only by having what these followers of fashion are willing to buy when they want to buy it that complainants can stay in business. And that those desiring to buy a hat as a hat, or a dress as a dress, sans style, are able to get the same at a price less than the original cost of acquisition to complainants, while those who insist upon having a hat plus style, and a dress plus style, are willing to and must be willing to pay a sufficient amount to allow the dealer therein trafficking to earn a profit therefrom, and complainants aver that said respondents have no power to control the prices paid for the rendition of said service in furnishing style in said several departments; but, notwithstanding this, have wrongfully assumed jurisdiction thereover and are holding complainants up as profiteers to the public, when they are performing this service and charging therefor that which the public is willing to pay, and over which service said respondents are wholly without jurisdiction. Said goods so offered are not in any wise affected with a public use, and the acquisition of such commodities, plus the style, is merely the gratification of a feminine whim, and respondents are wholly without power, despite their acts to the contrary, to take from these complainants for the private gratification of the fancy of their customers their private property without just compensation for private use. An analysis of each of these sales shows that there is a sale by complainants of the actual goods made, and also the sale of a rendition of a service which, as a completed whole is requisite in each of these departments, and the right thus to sell style when disposing of the materials expressing it, is a property right wherein complainants have invested large

amounts of money and which cannot from them be taken contrary to the Federal Constitution.

Complainants further aver that they are entitled to indemnification against the loss irretrievably incident to such a business, and in being a purveyor of style must be allowed to dispose of those commodities that do not express it at a loss that must be allocated against the purchase price of the goods sold; and that when thus conducted the business yields only a reasonable profit in some stores, and in others almost none.

Complainants aver that the United States has no authority over the selling price of any of said commodities so now localized in and become a part of the mass of property, and said business is done with reference to a class of commodities wherever the United States is, as to said luxuries and near luxuries, wholly without power to take jurisdiction, as they do not in any way come within the war power of said Government.

Complainants aver that said respondents further violated the provisions of the Constitution and of said statute, in this: that the complainants are the owners of divers commodities purchased outright, and the price thereof in open market has so materially advanced as that the replacement value thereof is greater than the price at which complainants are selling the same at retail; and yet said respondents are seeking to compel complainants to dispose of their private property at prices which are less than said replacement value, and thus give to customers the uplift which has accrued to complainants by reason of its property.

Complainants further aver that they are vested with a right to convert their property at the reasonable wholesale value plus a reasonable retail profit thereon. That they are in business to stay. Due to the possession of a stock of goods wherein there has been an uplift a large amount of paper profits apparently have accrued to complainants, but this must be set aside as a reserve to absorb the loss which will inevitably occur due to the possession of a similar stock of goods when the prices of such goods purchased at the present abnormal cost have again returned to their former levels; and complainants are entitled to retain this apparent paper profit as a reserve against said decline, and should the demands of respondents be complied with by a conversion at the prices fixed the result will be the destructions of complainants' businesses, and when the abnormal prices are restored that

apparent uplift in values will be completely eliminated, and complainants will be possessed of but a stock of goods. Complainants are but taking from their businesses an amount equal to their normal profits, leaving said paper profits apparently accruing to continue in the business to insure its solvency, which will be destroyed if complainants are not vouchsafed the rights herein sought.

Complainants charge and withdraw from their business only the amount which it is proper to withdraw for the rendition of a service as a distributor and not the apparent amount represented by said paper uplift in values.

That the said United States Government and said respondents have no jurisdiction whatsoever over luxuries and near luxuries, wherein complainants deal; but notwithstanding said want of power, said respondents have wrongfully assumed jurisdiction over complainants' businesses with reference thereto, and will, unless restrained, continue so to exercise said trespasses, as hereinbefore set out, as to deprive complainants of their constitutional rights.

(11) The complainants show unto the Court that neither the Fair Price Commissioner for the State of Mississippi, nor the chairman of the Fair Price Committee for the City of Jackson, has any right or authority under the Constitution and laws of the United States to determine, or fix, or proclaim the profits at which the complainants shall sell their wearing apparel or any of their merchandise, and that such assumed exercise of authority is wrongful, unlawful and arbitrary, and an unwarranted assumption of power and authority, and an unwarranted and unlawful invasion of the lawful rights of complainants in the following respects, to-wit:

(a) The complainants do not manufacture merchandise or wearing apparel which they sell or offer for sale; they are distributors of merchandise only. There is no contention or claim on the part of the defendants, or any of them, that there is any combination in restraint of trade between the complainants and their competitors. There is, and will be, no claim on the part of the defendants that the goods sold by the complainants are sold under any agreement, express or implied, with their competitors as to the prices to be charged. Upon the other hand, complainants allege and aver that the sharpest competition exists between the complainants and mer-

chants engaged in a similar line of trade in the City of Jackson, and elsewhere throughout the State of Mississippi, and such prices as are charged by the complainants, as well as other merchants in the City of Jackson, and throughout the State of Mississippi, are the result of open and keen competition, and are the result of the law of supply and demand.

Complainants show unto the Court that they are citizens of the United States within the meaning of the Constitution and laws thereof; that they have the right to buy goods and to sell the same at a profit, provided the price charged is not the result of any unlawful agreement or combination, and complainants allege and aver that no such combination or agreement exists, or ever existed, and none will be claimed by the defendants; and the Congress of the United States has no right, nor has the State Fair Price Commissioner, or Taylor, the City Fair Price Commissioner, any kind of power or authority to fix or determine the amount of profit which the complainants shall have or receive upon a re-sale of their goods; that the right of the said complainants to purchase goods in the open market and to sell the same in the regular course of business at such price as will yield a fair and reasonable profit as a result of free and open competition and in the absence of combine or agreement in restraint of trade is property, in the enjoyment of which they are protected by the Constitution of the United States, especially the Fifth Amendment thereto, and that portion thereof providing that persons shall not be deprived of their property without due process of law, and that they shall not be denied the equal protection of the law.

Complainants, therefore, allege and aver that the said Fair Price Commissioners are without authority or power to fix, or attempt to fix, the profit which they shall enjoy or receive from such sale, for the reason that the pretended Act of Congress hereinbefore set out is void and without effect, in that the same is in violation of the Constitution of the United States, as hereinbefore alleged.

(b) Complainants show unto the Court that said Act of October 22, 1919, being an Act amendatory to the original Lever Act, purported to be enacted as a war time measure. Complainants show unto the Court, however, that the war between the United States and its allies and

Germany terminated in October, 1918, that the military and naval forces of the United States and its allies began to demobilize soon thereafter, and upon October 22, 1919, the military forces of the United States were practically demobilized, and the United States Government upon October 22, 1919, had ceased all war activities, and it had discharged the Committee charged with the duty of fixing the price of coal, had turned back to the owners thereof of the telegraph and telephone companies, and was ready to turn back to the owners thereof the railroads, which it has done since, as a matter of fact; if war existed at all between the United States and Germany on October 22, 1919, it existed only in theory and not in fact.

And complainants further show unto the Court that the passage of said Act of October 22, 1919, had no reference or relation, either near or remote, direct or indirect, to any state of war which may have existed, either in fact or theoretically, at the time of its passage, and Congress was without power and authority under the laws and Constitution of the United States after the termination of such war to pass any such act, and certainly without power and authority to pass an act dealing with wearing apparel, which, upon October 22, 1919, could have absolutely no relation or bearing upon such state of war as may have existed. In other words, these complainants allege and aver that upon October 22, 1919, and at all times since said date, so far as the carrying on of war between the United States and Germany is concerned, if any such war existed, either theoretically or as a matter of fact, the price which the complainants might charge for a gingham dress, or a pair of high heel shoes, a gentleman's collar, a crepe de chine lady's dress, or a lady's hat, was without the slightest importance or significance, and had no reference or relation thereto whatsoever, and that an act cannot be a war act merely by calling the same so; but, upon the other hand, in order to justify such legislation the condition in respect to the subject-matter of legislation must exist and be urgent.

Complainants show unto the Court that such businesses as the complainant companies carry on are not in interstate commerce, but confined solely to local business within the State of Mississippi; neither has it to do with any other matter or power falling within the range of congressional legislation or committed to Congress by the Constitution of the United States as a proper subject-matter of legislation.

(c) Complainants further show unto the Court that if they be mistaken in alleging that Congress was without power and authority to pass the Act of October 22, 1919, above referred to, then they allege and aver that the said Locke, State Fair Price Commissioner, and the said Taylor, are violating the said Act of Congress, both in letter and in spirit, in the maximum profit which they have fixed, determined and promulgated, and are attempting to intimidate the Complainants and other merchants in the State of Mississippi to submit to. Complainants sell no wearing apparel having reference to carrying on war.

Complainants show unto the Court that if Congress had the power to pass any such Act as was passed, that it was not the intention of Congress to deprive the Complainants of a fair and reasonable profit arising from the purchase and re-sale of their merchandise. Upon the other hand, it was the intention of the Congress of the United States in the passage of such Act that merchants should have, receive and enjoy a remunerative profit, at least as high a profit as was enjoyed prior to the war, because the Government itself levies by way of income and other purposes upon corporations, and upon the complainant corporations, as well as others, a very high tax, and it is necessary for it to do a more profitable business in order to yield the income which the Government would expect from the complainants.

Complainants show unto the Court that the maximum profit fixed and promulgated by the State Fair Price Commissioner, acting through the said Locke, and which are attempted to be enforced upon the complainants by the said Locke and the said Taylor are confiscatory, in that they are unreasonably low, and would not allow to the complainants a fair and reasonable margin of profit for the operation of their said business, and the complainants could only operate their business of selling wearing apparel at a positive loss.

Complainants show unto the Court that said proclamation would require the complainants to sell men's and boys' suits costing twenty-five dollars upon a margin of only 33 1-3 per cent; and would require complainants to sell such suits costing not over fifty dollars at a profit of not exceeding 35 per cent; would require them to sell shoes costing ten dollars at a profit of not over 33 1-3 per cent; would compel the complainants to sell ladies'

and misses' hats costing as much as fifteen dollars for a profit of not over 40 per cent.

Complainants show that in the ordinary conduct of their business that they could not sell all of such articles of wearing apparel upon such basis of profit and realize any profit therefrom; that upon the other hand, the cost of doing business, that is to say the cost of ascertaining the requirements of their customers, anticipating the same, purchasing and re-selling goods therefor, is so great that if the complainants should sell goods at or upon the basis of profit therein proclaimed they would lose money instead of making money, and would operate their business at a loss.

Complainants show unto the Court that during the year 1919 the R. E. Kennington Company sold in round figures a mill'on dollars worth of goods, and in its entire turn-over during the said year it did not average but 5.8 per cent profit, an itemized statement of which is hereto attached, marked Exhibit "A" to this bill of complaint, the same being asked to be considered the same as if set out herein in full in words and figures, although it sold said merchandise in some instances at a greater profit than is allowed, determined and fixed by the proclamation of the said Fair Price Commissioners, and if it should have to reduce its prices upon wearing apparel in accordance with such illegal, unlawful and arbitrary fixation of prices it would operate at a loss from such conformity thereto, and other complainants do business on the same basis.

Complainants further show unto the Court that the said Fair Price Committee purports to fix the profit to be had and received by the complainants on staple and fancy dry goods, although such staple and fancy dry goods are in no sense wearing apparel.

Complainants show unto the Court that the margin of profits as fixed by the said Fair Price Commissioners are arbitrary and have no reference to what basis of profit is necessary to the operation of such business which would really yield a remunerative profit, and they are arbitrary and confiscatory, and the complainants allege and aver that the profit is fixed upon lower basis than anywhere else in the United States; that said fixation ignores entirely the cost of replacement of the goods, is based entirely upon the actual cost of the goods without reference to the time when such goods were bought and what it would cost the complainants to replace the same

in the open market if they had to do so; and such fixation is further null and void and unlawful, wrong and arbitrary, and of no effect, because the said defendants, or any of them, in fixing the margin of profits to be charged by the complainants confessedly and admittedly have no power or authority to fix the price of any element of goods or expenses which enter into the complainants' business; they have no power or right, and will not attempt to exercise any power or right, to fix the rate of interest which the complainants are required to pay, the cost of clerk hire, the rent, insurance, or any of the other numerous expenses of complainants which grow out of the operation of their business and which should be added to the actual cost thereof, and should be taken into consideration in determining the profit necessary to be realized from a sale of such merchandise. Such fixation of prices further ignores and fails to take into consideration the loss to be sustained by the complainants growing out of the fact that many articles of wearing apparel out of each purchase, on account of change of styles, tastes and fashions, will become unsalable and a loss will be sustained, or will have to be carried beyond season and sold for anything the same can obtain, but it is based upon an economic policy of making each separate and independent sale stand on its own facts without reference to the entire conduct of the complainants' business or any line or department thereof.

(d) The complainants further show unto the Court that the activities of the said Fair Price Commissioners in attempting to proclaim and fix the margins of profit upon which the complainants shall operate their business is wrongful, arbitrary and illegal, because Congress has no power or authority under the laws and Constitution of the United States to delegate the power to fix margins of profit to any person, official, body or organization whatsoever. Further, that the President of the United States, in pursuance of such Act of October 22, 1919, has not issued any rules and regulations, nor has anyone else issued them for him as provided in said Act, and there has been no attempt under such Act by the President of the United States, or any one for him to fix the prices of wearing apparel, if any such right should exist, which is denied.

(12) Complainants show unto the Court that the large part of the business of said complainants is that of

buying and selling retail, as herein before set out, wearing apparel; that the purchase and sale of wearing apparel forms such a large portion of their business that if they should be compelled to adopt the maximum profits contained in the proclamation of the Fair Price Commissioner, which the City Fair Price Commissioner is endeavoring to coerce upon them, their business would be operated at an actual loss instead of a profit, in that the basis of profit allowed is not sufficient to allow the complainants to operate their business and receive sufficient revenue therefrom to successfully operate their said business.

(13) The Complainants further show unto the Court that the said State Fair Price Commissioner Locke, and the City Fair Price Commissioner Taylor, who are defendants herein, as herein before set out, have sought and contrived by various and sundry means to injure complainants and injure their business; that they autocratically and arbitrarily demanded of the complainants that which they have no right to exact, that they deliver and turn over to them invoices covering their wearing apparel, and when they, standing upon their constitutional rights, declined to do so, they hold them out to the public as profiteers; that the R. E. Kennington Company is one of the largest merchants in the State of Mississippi, and the said Locke and the said Taylor, for the purpose of intimidating and coercing the other and smaller merchants in the State of Mississippi to deliver and show to the State Fair Price Commissioner, or any of his subordinates, their books, records, and invoices, and in order to compel and arbitrarily coerce them to conform to the basis of profit which they have autocratically, arbitrarily and illegally assumed to fix, the defendants have by various and sundry ways, by unlawfully and untruthfully advertising them as profiteers, by making threatening statements as to what they propose to do with them, by threatening to prosecute them, have them arrested and sent to jail for violating the law, have sought by such means not only to coerce the complainants, but through them other merchants in the State of Mississippi who have dared to stand on their constitutional rights and refuse to deliver such invoices for inspection or refused to conform to the unlawful, arbitrary and confiscatory basis of profit assumed to be fixed by the said State Fair Price Commissioner and his subordinates and associates in the State of Mississippi.

(14) Complainants show unto the Court that they are informed and upon information allege and aver, that unless the complainants do deliver their invoices to the said State Fair Price Commissioner or the City Fair Price Commissioner Taylor, and unless they do conform their basis of profit to that fixed by the arbitrary and confiscatory decree of the State Fair Price Commissioner that they will go before the grand jury to be called together on next Monday, which is the third day of May, 1920, and each grand jury thereafter, and cause complainants to be indicted, arrested and tried because of their failure and refusal to conform to the basis of profit fixed in said proclamation, and to change their entire business and operate the same upon a scale of profit arbitrarily, autocratically and unlawfully fixed; that such action will be taken, so the complainants are advised, and believe, and allege and aver, for the sole and only purpose of coercing them, and through them other merchants in the State of Mississippi, who will be intimidated and influenced thereby to adopt the basis of profits unlawfully, arbitrarily and autocratically proclaimed by the said State Fair Price Commissioner, and which they are endeavoring by intimidation, coercion, propaganda and unlawful prosecution to force the complainants, and after them other merchants of the State to adopt.

(15) Complainants show unto the Court that the said Act of October 22, 1919, cannot become the basis of a criminal prosécution, and that no legal indictment can be based upon the provisions of said statute.

Complainants show unto the Court that the complainants do not hoard any merchandise; that every article of wearing apparel and other merchandise which they have in their stores is for sale every day in the week and every hour in the day at one uniform price fixed by the management of said businesses; that such price is fixed by the management of such businesses at such an amount as from past experience, judgment and observation the complainants believe will secure to them a fair and reasonable return on their business.

Complainants show unto the Court, however, that said Act of October 22, 1919, charges now no crime against the complainants, or either of them, for the following reasons, to-wit:

(a) Congress was attempting in the passage of said Act to exercise a power not delegated to it by the Constitution of the United States.

(b) Because no state of war existed, as a matter of fact, between the United States and Germany and her allies at the time of the passage of such act.

(c) That wearing apparel bore no relation to such state of war as may have existed, if any, upon the 22nd day of October, 1919, or at any time since, so as to confer upon Congress authority to regulate the prices thereof.

(d) The said amending Act of October 22, 1919, and particularly Section 2 thereof, does not define the offense thereby denounced as a crime for which severe punishment and penalty is thereby provided, but leaves the definition thereof to the judgment and conscience of judges and juries in trials after the fact; therefore, sa'd statute is necessarily an ex post facto law, in conflict with Article 1, Section 9, Sub-division 3 of the Constitution of the United States.

(e) By reason of said facts last aforesaid, said amending act is likewise in conflict and prohibited by Article 6 of the amendment to the Constitution of the United States, in that no one accused of a violation of said Act, in so far as it relates to wearing apparel, or the rates charged or prices made or exacted in handling, dealing in, or with selling the same, is or can be thereby informed of the nature or cause of the accusation against him, and no one at the time of the Act which forms the basis of the charge can by any possibility determine whether he is or is not violating such statute.

(f) Said amending Act of October 22, 1919, especially Section 2 thereof, amending Section 4 of the original Act is prohibited by, and is in violation of Article 8 of the Amendments to the Constitution of the United States prohibiting the imposition of cruel and unusual punishment in that the punishment provided in said Section is provided for each separate sale which might be made by the complainants, and is therefore in violation of such amendment to the Constitution.

(g) Said amending Act of October 22, 1919, and particularly Section 2 therof, is in conflict with Article

5 of the Amendments to the Constitution of the United States, in that thereby complainants and each of them, and others similarly situated, are deprived of their liberty and of their property without due or any other process of law, and private property taken without just or any compensation, and in that they are subject to fine and imprisonment for an offense, or offenses, which they were not and could not be previously informed, and the commission of which they could not avoid, because they had not been, and could not be, advised as to what act or acts could or did constitute such offense, and in that they and each of them are and necessarily will be deprived of their liberty and property without due or any process of law, in that they are thereby deprived of the liberty and private property right of making and carrying out such contracts as they may desire concerning the handling, buying and selling of wearing apparel.

(h) The business in which the complainants are engaged of buying and selling or handling and dealing in wearing apparel is a private business, not of such a public nature as to permit the regulation thereof by public authority of the practices, rates, charges and methods employed, or the profit to be derived therefrom, and for such reason the act of Congress hereinbefore referred to deprives the complainants of their property without due process of law, or the equal protection before the law, to which they are entitled.

(i) Said Act of Congress of October 22, 1919, especially Section 2 thereof, is in violation of the Constitution of the United States, in that it deprives the complainants of their property without due process of law, and deprives them of the equal protection of the law, in that those engaged in certain occupations, pursuits and businesses are wholly exempt from the operation thereof; that said Section is lacking in uniformity, which is essential to any act constituting or defining a crime, and is therefore unjust, unreasonable, and arbitrary for the reasons hereinbefore set out.

Complainants show unto the Court that at the utmost complainants would only be guilty in some instances of failing and refusing to comply with the maximum margin of profits as proclaimed by the Fair Price Commissioners, State and City, as aforesaid. If it be conceded that they are acting under the regulations of the Executive depart-

ment or Department of Justice of the United States, or any other board or department having authority to deal therewith, the Act of Congress of October 22, 1919, does not purport to make failure to comply with such regulations a crime; nothing should be added to such Act by construction, and this Court cannot by judicial construction convert into a crime that which Congress has not so designated and defined.

(16) Complainants show unto the Court that unless the said A. Mitchell Palmer, Locke, Taylor, Figg, Alexander and Fulgham are enjoined by this Court, they will upon the convening of the grand jury before this Court on the 3rd day of May, 1920, and at each term thereafter, for the purpose of coercing, intimidating and compelling the complainants to do that which they are not lawfully required to do, to conform their basis of profit to the unlawful, illegal and confiscatory and autoocratic fixation and proclamation of the said Fair Price Commissioners, will offer evidence before the grand jury to be empaneled by this Honorable Court, and will unlawfully, arbitrarily, autocratically and in violation of the rights of the complainants, and each of them, seek to have each of the complainants indicted therefor.

(17) Complainants show unto the Court that if the said defendants are permitted to take such course, that is to say, if they are permitted to offer evidence before the grand jury in respect to the margin of profit fixed by the said State Fair Price Commissioner, and upon the refusal of the complainants to conform thereto, and if they are permitted to secure indictments from the grand jury based thereupon, these complainants show unto the Court that the complainants will sustain irreparable harm, injury and damage; that the complainants' good standing as merchants will be seriously injured and impaired; that the credit of the complainants will be seriously injured, impaired and probably jeopardized; that such unlawful, arbitrary and autocratic acts on part of the defendants, and each of them, will injure the complainants, in that it will tend to cause persons to cease to deal with the complainants and will hold them up to scorn and ridicule, all of which steps the complainants are advised will be taken solely and only for the purpose of said pretended unconstitutional, ineffectual and void statute to coerce the complainants autocratically, illegally and arbitrarily to conform the operation of their business in the sale of

wearing apparel to the basis of profits unlawfully, autocratically and arbitrarily fixed and proclaimed by the usurpers heretofore referred to.

(18) Complainants allege that they are without relief except in a court of equity.

(19) Wherefore, the complainants pray:

(1) That the defendants be required to answer this bill of complaint, but not under oath, answer under oath being hereby expressly waived;

(2) That there be issued herein a preliminary or interlocutory injunction, to remain in effect until the final hearing of this cause, prohibiting defendants, their agents, representatives, and each of them, from enforcing, or attempting to enforce, against the complainants, and each of them, or against any of their agents or officers, or agents, officers or representatives of either of them, the act of Congress approved August 10, 1917, as amended by said Act of Congress approved October 22, 1919, from prosecuting, or attempting to prosecute or instituting or attempting to institute, any prosecution against them, or either of them, under said Act, and from in any manner interfering with them, or either of them, or with the business of them, or either of them, in taking or attempting to take any steps whatsoever in respect to them, or either of them, or the business of them or either of them under or by virtue of any right or authority claimed to exist by reason of said Act as amended, or any part thereof, and that upon final hearing said injunction will be made perpetual.

(3) The Court will declare and decree such Act of August 10, 1917, as amended by said Act of October 22, 1919, and particularly Section 1 of said Act of October 22, 1919, and Section 1 of said Act of August 10, 1917, as amended by said Section 1 of said Act of October 22, 1919, and Section 4 of said Act of 1917 (as amended by Section 2 of said Act of October 22, 1919, wholly invalid and of no effect as against these complainants, and each of them, and all others similarly situated.

(4) For such other, further and different relief as to the Court may seem just and meet in the premises, and for costs in their behalf expended.

GREEN AND GREEN,
WATKINS & WATKINS,
Attorneys for Complainants.

STATE OF MISSISSIPPI,
Hinds, County.

Personally came before me, the undersigned authority in and for said State and County, the within named R. E. Kennington, President of the R. E. Kennington Company and the Union Department Store, who makes oath that to the best of his knowledge and belief the matters and things herein alleged are true.

R. E. KENNINGTON.

Sworn to and subscribed before me this the 3rd day of May, 1920.

JOHN THOMPSON,
Clerk U. S. District Court.

**STATEMENT SHOWING FOR WHAT THE SALES OF
R. E. KENNINGTON COMPANY FOR THE PAST
FISCAL YEAR WERE SPENT, AND WHAT PER-
CENTAGE EACH ITEM BORE TO THE TOTAL
SALES:**

Cost of Goods Sold (Invoice) . . .	\$640,434.17	65.8%
Salaries	120,229.82	12.38%
Postage	1,762.93	00.18%
Delivery Service	4,112.30	00.42%
Advertising	13,109.37	01.85%
Stationery, Wrapping Paper, Twine, etc.	4,855.55	00.5%
Fire Insurance Premiums.	1,704.87	00.17%
Electricity for Lighting and Pow- er, including Light Globes and repairs to equipment	5,067.14	00.52%
Water	165.31	00.018%
Fuel	896.92	00.0092%
Rent	19,452.60	01.9%
Repairs	3,603.66	00.4%
Telephone and Telegraph	852.12	00.09%
New York Buyers Expense	11,456.77	01.21%
Decorations	1,597.73	00.16%
Taxes (City, County and State) . .	5,875.38	00.6%
Interest	797.93	00.08%
Loss on Accounts and Deprecia- tions on Fixtures and Equip- ment	5,470.03	.6%
Freight and Express	10,064.56	1.1%
Federal Income and Excess Profit Tax	54,072.28	5.6%
Miscellaneous Expense Items too small to classify	9,910.59	1.02%
Net Profit for year	57,361.48	5.8%
Total sales for year	\$972,853.82	100.0%

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI**

R. E. Kennington et al.

v.

A. Mitchell Palmer et al.

Final Decree denying injunction and dismissing bill.

Be it remembered that this day came on to be heard the above entitled cause upon the application of the Complainants, R. E. Kennington, the R. E. Kennington Company, and the Union Department Store, for the issuance of a restraining order and a preliminary injunction whereof notice was duly given to the Honorable Julian Alexander, United States Attorney for the Southern District of Mississippi, and thereupon counsel for the said Complainant presented their said Bill and the application for said restraining order and preliminary injunction, which was then and there resisted by the said United States Attorney for and on behalf of himself and the Assistant District Attorney, defendants. (The other defendants not appearing or being served with notice), and the Court having heard the arguments of the respective parties was of opinion that said Complainant had a plain, adequate and complete remedy at law, and that for this reason alone said Complainants were not entitled further to proceed in this cause in this Court, and that the Bill of Complainant should be dismissed; but, nevertheless, without prejudice, wherefore, it is hereby ordered, adjudged and decreed that the Bill herein be and the same is hereby dismissed finally, and that the defendants go hence without day, and that Complainants do pay all costs in this behalf to be taxed for all of which let execution issue. To all of which Complainants duly in open Court excepted and had their exception allowed and were given leave as part of this final decree forthwith to present to the Court a Petition for an appeal direct to the Supreme Court of the United States.

It is further ordered that this decree of dismissal is without prejudice to the rights, if any, Complainants may have at law.

Ordered, adjudged and decreed this the 6th day of May, 1920.

EDWIN R. HOLMES, Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE JACKSON DIVISION OF THE SOUTH-
ERN DISTRICT OF MISSISSIPPI.

R. E. Kennington et al

v.

A. Mitchell Palmer et al.

PETITION FOR APPEAL

The above named complainants, R. E. Kennington, The R. E. Kennington Company, and the Union Department Store, all and each of them, feeling themselves jointly and severally agreed by the decree entered in the above entitled cause on this 6th day of May, 1920, whereby it was ordered, adjudged and decreed that their bill of complaint be dismissed without prejudice, and petitioners jointly and severally respectfully represent that the said decree is a final decree and involves the construction and application of the constitution of the United States in and to the facts as averred in said bill setting forth thereunder that complainants and each of them were denied their constitutional rights as will more fully appear by reference thereto, wherefor, reference is hereby made to save prolixity; but complainants and each of them further say that said cause involves the construction and application between complainants and defendants of:

- (A) Article 1, Section 1, wherein Legislative power was vested in Congress of the United States;
- (B) Article 1, Section 8, whereunder Congress is given power, subdivision 5, to coin money, regulate the value thereof and of foreign coin;
- (C) Article 1, Section 8 thereof, whereunder Subdivision 11 Congress was given power to declare war.
- (D) Article 1, Section 8 thereof, subdivision 18, whereunder power is given to carry into effect the foregoing powers and all other powers vested in said government of the United States.
- (E) Article 3, Section 2 thereof, whereby the judicial power is vested Subdivision 1 in the courts of the United States.
- (F) Article 4, Subdivision 4 thereof, requiring a guaranty to every state in the Union of a Republican form of Government.

(G) Article 6, Section 2 thereof, whereunder said Constitution and the laws made in pursuance thereof are the supreme laws of the land.

(H) The fourth amendment thereof, whereunder rights of the people to be secure in their person, houses, papers and effects against unreasonable searches and seizures is granted.

(I) Amendment fifth thereof whereunder no person can be deprived of life, liberty or property without due process of law or have his property taken for public use without just compensation.

(J) Amendment 6th thereof, where in all criminal prosecutions, the accused shall enjoy a right to a speedy and public trial by an impartial jury and to be informed of the nature and cause of the accusation against him and to be confronted by the witnesses.

(K) Amendment 9 thereof, whereunder the enumeration of the rights contained in said constitution are not to disparage or deny further rights.

And complainants further aver that in said cause is drawn in question the constitutionality of a certain alleged law of the United States, commonly known as the Lever law, enacted October 22nd, 1919, and the original act whereof this is an amendment passed August 10th, 1917, and complainants and each of them further show that the divers and sundry powers and prerogatives were assumed by said respondents as set forth in said bill, all in contravention of said constitutional rights of said complainants and of their statutory rights in the premises; and that in the rendition of said decree, the rights to so file this petition as a part thereof was expressly reserved and now complaints in virtue thereof pray an appeal direct to the supreme court of the United States and assign for errors, all those certain errors set forth in the assignment of errors herewith filed and prays that this appeal may be allowed the amount of the bond therefor fixed and that a transcript of the record, papers and proceedings, duly authenticated may be forthwith sent direct to the supreme court of the United States.

R. E. KENNINGTON,
THE R. E. KENNINGTON COMPANY,
UNION DEPARTMENT STORE.

By WATKINS & WATKINS,
GREEN AND GREEN,
Their Solicitors.

IN THE DISTRICT COURT OF THE UNITED STATES
 FOR THE JACKSON DIVISION OF THE SOUTHERN DISTRICT OF THE STATE OF MISSISSIPPI.

R. E. Kennington et al

v.

A. Mitchell Palmer et al.

ASSIGNMENT ERRORS

Now comes the complainants and each of them in the above entitled cause and file herein the following assignment of errors as to them and each of them and for such errors assign the following:

- (1) The District Court erred in dismissing said bill.
- (2) The Court erred in not granting to the complainants and to each of them the relief and all of it as prayed in the said bill herein by them filed.
- (3) The Court erred in not declaring said Lever Law, in so far as it seeks to affect the said complainants and each of them under the allegations of the said bill, in violation of those sections of the Constitution of the United States set forth in said bill, that is to say as being under the allegations of said bill in contravention of—

Article I, Section 1, wherein all legislative power was vested in the Congress of the United States.

Article I, section 8, whereunder Congress is given power under Subdivision 5 thereof, to coin money, regulate the value thereof and of foreign coin.

Article I, Section 8, whereunder Congress is given the sole power to declare war.

Article I, Section 8, whereunder Congress is given power under Subdivision 18th thereof to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States.

Article 3, Section 2 thereof, whereby the judicial power under Subdivision 1 thereof is vested in the Courts of the United States.

Article 4, Section 4 thereof, whereunder the United States is required to guarantee to each State in the Union a republican form of government.

Article 6, Section 2 thereof, whereunder it is declared

that this constitution and all laws made in pursuance thereof shall be the supreme law of the land.

The Fourth Amendment thereof, whereunder the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures is guaranteed.

The Fifth Amendment thereof, whereunder no person can be deprived of property, life or liberty without due process of law.

The Fifth Amendment thereof, whereunder no person shall have his private property taken for public use without just compensation.

The Sixth Amendment thereof, whereunder, in all criminal prosecutions the accused shall enjoy the right to a speedy public trial by an impartial jury of the State and District and to be informed of the nature and cause of the accusation against him and to be confronted by the witnesses.

Amendment Ninth thereof, whereunder it is declared that the enumeration in said Constitution shall not be construed to deny or disparage other rights retained by the people and the several States and not delegated to the United States.

(4) The Court erred in not holding that said Fair Price Commission of the State of Mississippi was without power and authority to publish said alleged fair price list and thereunder fix the price of the commodities therein set forth.

(5) The Court erred in not holding said provisions of the said Lever Law so uncertain and vague as to be unenforceable.

(6) The Court erred in not holding that the said Fair Price Commission of the State of Mississippi was wholly without power and/or authority as to

(a) Fixation of prices of luxuries.

(b) Disregarding the replacement value and predicated the selling price absolutely upon the original cost thereof plus said margin.

(c) In holding the said Commission vested with rights as to style.

(d) As to making charges for the furnishing of style.

- (e) In disregarding additional buying expenses.
- (f) In not integrating expenses incident to changing of style and other variable factors set forth in said bill.
- (g) In the other respects set forth in said bill.

Wherefore the complainants and each of them pray that said decree of the District Court may be reversed as to them and each of them and this cause be remanded to be proceeded with in conformity to law.

WATKINS & WATKINS,
Solicitors.

GREEN AND GREEN,
Solicitors for Complainants.

IN THE DISTRICT COURT OF THE UNITED STATES
IN AND FOR THE JACKSON DIVISION OF THE
SOUTHERN DISTRICT OF MISSISSIPPI.

R. E. Kennington et al.

v.

A. Mitchell Palmer et al.

ORDER ALLOWING APPEAL

Now on this 6th day of May, 1920, the said complainants and each of them having duly filed therein the assignment of errors and petition for appeal from that certain decree entered in said cause on the 6th day of May, 1920, finally dismissing said bill, it is hereby ordered by the court that an appeal to the supreme court of the United States from the final decree heretofore filed and entered herein be and the same is hereby allowed and that a certified transcript of the record be forthwith transmitted in accordance with law to said court and it is further ordered that complainants have the right so thus to appeal upon the execution by them of a bond in the sum of One Thousand Dollars to be by them filed and to be by the Clerk approved.

Ordered this May 6th, 1920.

EDWIN R. HOLMES,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
AT JACKSON.

R. E. Kennington,
The R. E. Kennington Co.,
And Union Department Store

v.
A. Mitchell Palmer et al.

In Equity—No. 118.

APPEAL BOND

We, R. E. Kennington, the R. E. Kennington Company and the Union Department Store, Principals, and W. H. Watkins and H. V. Watkins, Sureties, hold ourselves well and truly bound unto the United States in the sum of One Thousand Dollars (\$1,000.00), for the payment of which amount, we bind ourselves, our heirs and assigns.

The condition of the foregoing obligation is that, where as, upon the 6th day of May, 1920, the Hon. Edwin R. Holmes, Judge of the District Court of the United States for the Southern District of Mississippi, at Jackson, rendered a decree dismissing the original bill of complaint in the above entitled cause, and:

Whereas, the above bound principals, who are the complainants in said cause, being aggrieved at said decree, have demanded an appeal to the Supreme Court of the United States, now:

Therefore, if the above bound R. E. Kennington, R. E. Kennington Company and the Union Department Store shall well and truly prosecute such appeal, and fully pay and satisfy such judgment as may be rendered by the Supreme Court of the United States against them, or either of them, in said cause, as well as the costs of the court to be taxed, this obligation shall be and become void; otherwise, shall remain in full force and effect.

Signed this, the 6th day of May, 1920.

R. E. KENNINGTON,
By W. H. WATKINS,
Attorney.

R. E. KENNINGTON CO.
By W. H. WATKINS.

UNION DEPARTMENT STORE,
By W. H. WATKINS,
Attorney.

W. H. WATKINS,
H. V. WATKINS,
Attorney.

Sureties.

The foregoing bond is approved, this 6th day of May, 1920.

JACK THOMPSON,
Clerk District Court of the United States for the Southern District of Mississippi, at Jackson.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION.

R. E. Kennington et al

v.

A. Mitchell Palmer et al.

ENTRY OF APPEARANCE IN THE SUPREME COURT

Comes Julian P. Alexander, United States District Attorney for the Southern District of Mississippi, Jackson Division, and H. M. Fulgham, Assistant United States District Attorney for the Southern District of Mississippi, Jackson Division, and waive citation and service thereon upon appeal to the Supreme Court of the United States herein prayed by Complainants in said cause under the order of the District Judge allowing said appeal on May 6, 1920, and hereby enter their appearance as Appellees in said Supreme Court in said appeal.

JULIAN P. ALEXANDER,
United States District Attorney Southern District of Mississippi, Jackson Division.

H. McK. FULGHAM,
Assistant United States District Attorney Southern District of Mississippi, Jackson, Division.

May 22, 1920.

Hon. Solicitor General King,

Dept. of Justice, Washington, D. C.

Relative Kennington vs. Alexander involving phases Lever Law discussed with you. Record being printed here may we please therein recite that you waive citation for appellees and enter appearance. Answer quick.

GREEN & GREEN.

Wahington, D. C., May 22, 1920.

Green and Green,

Jackson, Miss.

You may receive waiver citation. I will enter appearance as soon as record filed.

KING, Solicitor General.

IN THE DISTRICT COURT OF THE UNITED STATES,
SOUTHERN DISTRICT OF MISSISSPPI,
JACKSON DIVISION.

R. E. Kennington et al

v.

A. Mitchell Palmer et al.

PRAECIPE.

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare transcript of the record in this cause, to be filed in the office of the Clerk of the United States Supreme Court under the appeal heretofore perfected in said Court, and include in said transcript the following pleadings and papers on file, to-wit:

1. Caption of record.
2. Original Bill of Complaint.
3. Final decree denying injunction and dismissing Bill.
4. Petition for appeal.
5. Assignment of Errors.
6. Order allowing appeal.
7. Appeal bond.
8. Citation and acknowledgement of service theron.
9. Clerk's certificate to transcript.

WATKINS & WATKINS,
GREEN & GREEN,

Solicitors for Appellants.

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This ~~Praec~~ecipe contains a complete record of all proceedings.

JULIAN P. ALEXANDER.
M. MCK. FULGHAM.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

I, Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi, do hereby certify that the foregoing pages contains a true and correct transcript of the record in the case of R. E. Kennington et al. vs. A. Mitchell Palmer et al., as the same appears of record in my office at Jackson, Mississippi.

Witness my hand and seal of said court at Jackson, in said District this May 21, 1920.

JACK THOMPSON, Clerk.